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## Attorneys for defendants

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

13 BARBARA NEU on behalf of herself and all ) Case No.: C 07-06472-CW  
14 others similarly situated, )  
15 Plaintiff, ) MOTION TO DISMISS  
16 )  
17 vs. )  
18 TERMINIX INTERNATIONAL, INC., THE )  
19 TERMINIX INTERNATIONAL COMPANY, )  
20 THE SERVICEMASTER COMPANY, )  
SERVICEMASTER CONSUMER SERVICES, )  
SERVICEMASTER CONSUMER SERVICES )  
LIMITED PARTNERSHIP, )  
21 Defendants. )

1                   **MOTION TO DISMISS**

2                   Defendants, TERMINIX INTERNATIONAL, INC., THE TERMINIX  
 3 INTERNATIONAL COMPANY LIMITED PARTNERSHIP, THE SERVICEMASTER  
 4 COMPANY, SERVICEMASTER CONSUMER SERVICES, INC., and SERVICEMASTER  
 5 CONSUMER SERVICES LIMITED PARTNERSHIP, by and through their attorneys,  
 6 Christopher J. Borders and David R. Creagh of HINSHAW & CULBERTSON LLP, now move  
 7 pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss plaintiff's Amended  
 8 Complaint. In support of their Motion, defendants state:

9                   1.       On April 8, 2008, this Court dismissed plaintiff's Complaint and provided  
 10 plaintiff specific directives and admonitions for repleading her claims. (*See* Court Order dated  
 11 April 8, 2008 Granting Motion to Dismiss and Granting Leave to Amend, Doc. 39)(hereafter "4-  
 12 8-08 Court Order"). Despite the cautionary language from the Court, plaintiff filed an Amended  
 13 Complaint that amounts to nothing more than a rambling, virtually incoherent diatribe that fails  
 14 to cure any of the deficiencies which resulted in dismissal of the original Complaint and fails to  
 15 state any viable cause of action.

16                   2.       Plaintiff's Amended Complaint attempts to state the following claims against the  
 17 defendants:

18                   Count One: Breach of Contract and Warranty

19                   Count Two: Professional Negligence, Wantonness and Recklessness (including  
 negligent training, supervision and retention)

20                   Count Three: California Unfair Competition Law (Business and Professions  
 Code §17500)

21                   Count Four: California Unfair Competition Law (Business and Professions  
 Code §17200)

22                   Count Five: Violation of Consumers Legal Remedies Act (Civil Code § 1750,  
 et seq.) (*See* plaintiff's Amended Complaint, Doc. 46).

23                   3.       With respect to the breach of contract and warranty claim, in dismissing the  
 24 original Complaint, the Court instructed plaintiff to "append any contract or contracts she alleges  
 25 to have been breached and shall indicate the contract terms upon which she bases those claims."

1 (See 4-8-08 Court Order, Doc. 39, Page 7). The plaintiff is not even a named party to the  
2 contract attached to the Amended Complaint and the pleading fails to cite the specific contract  
3 terms alleged to have been breached.

4        4. In dismissing the negligence claims in the original Complaint, the Court found  
5 that the economic loss rule applied where, as here, the alleged negligence arose out of an  
6 obligation created by contract and the claimed damages are the same as those pled in the breach  
7 of contract claim. (4-8-08 Court Order, Doc. 39, Page 9). The Court granted the plaintiff leave  
8 to replead her negligent training, supervision and retention claim “if she can allege facts  
9 sufficient to find the existence of a duty beyond that created by contract.” (4-8-08 Court Order,  
10 Doc. 39, Page 10). The Amended Complaint fails to allege such facts.

11       5.      With respect to the plaintiff's fraud claims (Counts Three, Four and Five), the  
12 Court's April 8, 2008 ruling required plaintiff to identify the specific false statements of fact,  
13 when and where they were made, why plaintiff believes the statements were knowingly false  
14 when made, and how plaintiff will prove they were knowingly false when made. (4-8-08 Court  
15 Order, Doc. 39, Pages 12-13). For claims based on oral representations, the plaintiff was  
16 required to identify who made the allegedly false statements, and for written representations, the  
17 plaintiff was to attach the document or quote the relevant provisions verbatim. (*Id.* at 12).  
18 Plaintiff's Amended Complaint falls woefully short of meeting these pleading standards.

19       6. Lastly, with respect to the claims against The ServiceMaster Company,  
20 ServiceMaster Consumer Services, Inc., or ServiceMaster Consumer Services Limited  
21 Partnership, the Court ruled that plaintiff “must allege facts to support a finding that  
22 ServiceMaster can be held liable under [theories of alter ego, agency, or direct participation in  
23 the subsidiary’s wrongdoing].” (4-8-08 Court Order, Doc. 39, Pages 13-14). The allegations  
24 against these defendants in the Amended Complaint are substantively identical to the allegations  
25 in the original pleading except for the addition of some conclusory language that does not meet  
26 the Court’s directive.

1           7. Defendants incorporate herein by reference the arguments and authorities cited in  
2 their supporting Memorandum of Law.

WHEREFORE, defendants, TERMINIX INTERNATIONAL, INC., THE TERMINIX  
INTERNATIONAL COMPANY LIMITED PARTNERSHIP, THE SERVICEMASTER  
COMPANY, SERVICEMASTER CONSUMER SERVICES, INC., and SERVICEMASTER  
CONSUMER SERVICES LIMITED PARTNERSHIP, pray that this Honorable Court grant their  
Motion to Dismiss and dismiss the plaintiff's claims against them, award costs of this action and  
all other just and appropriate relief.

10 | Dated: May 19, 2008

Respectfully submitted,

/S/

By: Christopher J. Borders  
One of the Attorneys for the defendants.